

TENNESSEE AUCTIONEER COMMISSION

The Tennessee Auctioneer Commission held its meeting December 5, 2006, Room 640, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. Those present for the meeting were Bobby Colson, Chairperson; Kenneth Dreaden, Vice Chairperson; Howard Phillips, Board Member; Marvin Alexander, Board Member; Bethany Heuer, Staff Attorney; Lynn McGill, Administrative Director; Sheila Piper, Administrative Assistant and members of the Tennessee Auctioneer Association.

Motion was made by Marvin Alexander and seconded by Howard Phillips to adopt agenda. Motion carried. No opposition.

Minutes from the meeting of October 2, 2006 were presented to the Commission Members for approval. Motion was made by Howard Phillips and seconded by Kenneth Dreaden to approve said minutes. Motion carried. No opposition.

David Paul Williford's application was presented to the Commission Members for approval. After review, motion was made by Kenneth Dreaden and seconded by Howard Phillips to approve application. Motion carried. No opposition.

William T. McLemore appeared before the Commission Members for approval of firm application. After review, motion was made by Marvin Alexander and seconded by Kenneth Dreaden to approve application. Motion carried. No opposition.

200603234.

File has been authorized for a formal hearing. Staff Attorney requested authorization for an informal as well.

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to take Legal's recommendation to schedule an informal conference. Motion carried. No opposition.

200504389. Collier Auction and Realty.

This complaint was filed pursuant to TCA 62-19-116(e), which stated in part that when a person files suit that may result in a judgment amount, they should promptly notify the Commission in writing. This complaint was filed immediately after a complaint was filed in U.S. District Court. (Complainant was going to file under the recovery account, should they win the suit). Legal has been informed by the Respondent's counsel that the case has been dismissed by the U.S. District Court and a settlement was reached. However, Legal examined the documents filed to see if the Commission should take any further action. The main thing that the Complainant alleged was that Complainant did not get enough money for motorcycles that they sold at auction, and that they were orally promised a certain amount for the vehicles. However, this was a case where an absolute

contract was signed. Therefore, the contract would prevail over any previous oral promises made by the auctioneer. Another allegation was that the Defendants sold vehicles that they could not legally sell because they did not have a license to sell vehicles *and* they were under a restraining order re: selling vehicles.

Motion was made by Kenneth Dreaden and seconded by Howard Phillips to take Legal's recommendation to close and forward to Motor Vehicle Commission. Motion carried. No opposition.

200501694. Elegant Treasures.

The complaint alleged unlicensed conduct. The Respondent stated that they were lied to by an employee and that is why they thought they were licensed when they were not. Respondent stated they were in the process of getting a gallery license when they received a citation and realized that they were in fact not licensed. The citation was never paid, and legal proceeded with formal charges as authorized by the Commission. However, all of the mail was returned unopened. Legal then sent out a request for investigations to hand-deliver a document in connection with formal proceedings.

The results of the investigation are as follows. The Respondent is no longer located at the address where the unlicensed auctions were allegedly taking place. The investigator then contacted County officials, who stated that their business license had been closed out in April of 2005, and there were no records indicating that they had reopened at any other address. The investigator then contacted the real estate company that rented the space where the Respondent had been located. Their representative stated that Respondent had been evicted in April 2005 for failure to pay rent. They were able to pull a home address, which is owned by a third-party and a cell phone number that is no longer in service. The investigator traveled three times to the address listed as Respondent's home address, but no one was there. It seems Respondent closed the auction business in April of 2005 and has not been conducting auctions since that time.

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to take Legal's recommendation to close and flag file. Motion carried. No opposition.

200603240.

The complaint alleged possible unlicensed activity. The Respondent conducted two auctions in Tennessee earlier this year. Both times, they hired a licensed auctioneer to conduct the auctions. The only violation is that they advertised the auctions without a license. Respondent desires to be in compliance and is now familiar with the Commission's advertising guidelines.

Motion was made by Howard Phillips and seconded by Marvin Alexander to request a copy of the contract and find out who signed the contract for the auction. Motion carried. No opposition.

200601609 & 200603315.

Files have been authorized for a formal hearing. Staff Attorney also requested authorization for an informal as well.

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to take Legal's recommendation to schedule an informal conference. Motion carried. No opposition.

200604071. Nashville Powersport Auction.

Complainant stated that he needed more money for the RV that he auctioned.

Respondent enclosed a copy of the signed absolute auction contract.

Motion was made by Howard Phillips and seconded by Marvin Alexander to take Legal's recommendation to close. Motion carried. No opposition.

200604033.

Complainant stated that he needed more money for the farm equipment that he auctioned. Respondent enclosed a copy of the signed absolute auction contract.

Motion was made by Marvin Alexander and seconded by Howard Phillips to send to Investigations for an audit. Motion carried. No opposition.

200603815. Numarkets.

This was an anonymous complaint alleging that Respondent auctioneers were "borrowing" money from their escrow account to cover operating expenses and the payments to co-signors were frequently delayed.

The matter was referred to investigations to audit Respondent's escrow account. The investigator went to Respondent's business to conduct the audit. The investigator reported that Respondent was very cooperative and provided all of the requested information. However, Respondent's business is made up entirely of internet drop off stores and is therefore not subject to the Commission's regulation.

Motion was made by Marvin Alexander and seconded by Kenneth Dreaden to take Legal's recommendation to dismiss and forward to the Attorney General's office and copy lobbyist, Tony Thompson. Motion carried. No opposition.

Motion was made by Howard Phillips and seconded by Kenneth Dreaden to forward all E-Bay complaints to the Attorney General's office. Motion carried. No opposition.

200600219.

Respondent is slated for a formal hearing. The complainants alleged that Respondent stated he would hold a "mock auction" and then actually sold their house for too low a price. Legal requested authorization for an informal conference with reviewer, Howard Phillips, in order to speak with the Respondent and discuss the possibility of settlement.

Motion was made by Marvin Alexander and seconded by Howard Phillips to take Legal's recommendation to schedule an informal conference. Motion carried. No opposition.

200603229.

Complainant stated that Respondent auction company sold him 15 4-wheelers and, since Complainant could not haul them all that day, the Respondent agreed to store 4 of the units for Complainant for a couple of weeks until he could come back and pick them up. Complainant stated that when he came back, the Respondent had sold the 4 4-wheelers that were being stored. Respondent offered to pay Complainant back for those units, but Complainant wanted the units, not the money. The matter went to civil litigation where the Respondent lost, had a judgment rendered against him; and he has since paid off that judgment.

Motion was made by Marvin Alexander and seconded by Howard Phillips to schedule an informal hearing and formal hearing. Motion carried. No opposition.

200603792. Unknown.

Respondent placed an ad in the paper for a one-day sale of a home. There was no license number in the ad and, therefore, a complaint was opened. An investigator was sent to the address on the day of the sale to investigate possible unlicensed activity. The investigation revealed that this was a private sale being conducted by the owner of the home. Respondent is therefore exempt from the Auctioneer laws and rules pursuant to T.C.A. 62-19-103(5).

Motion was made by Howard Phillips and seconded by Marvin Alexander to take Legal's recommendation to close. Motion carried. No opposition.

200604260. Gravitt Auction.

Complainant stated that they were the second highest bidder at the auction for real property. Both parties stated that the highest bidder never consummated the sale. Complainants stated that they should be able to purchase the property for their initial bid

at auction. Complainant stated that they believe that the high bidder was merely a participant in the auction to run up the bid price.

Respondent stated that they had an Exclusive Agency Contract (enclosed) with the seller (a construction company), and that this was an absolute auction. Respondent enclosed a copy of the sales agreement signed by both seller and buyer. Respondent stated that the Exclusive Agency Contract stated "Said property is to be offered at absolute auction, with no reserves or minimum bids. The property will be offered subject to the property being approved to be subdivided into tracts if necessary and subject to the property being zoned for commercial trade, at the seller's expense."

Respondent stated that the Real Estate Sales Agreement form was read aloud prior to the auction, and the brochure (enclosed) stated: "Announcements made day of sale supercede any printed material." Respondent stated that the Sales Agreement was never consummated and they have not received their buyer's premium. Respondent stated that the construction company has informed them that the road right-of-way previously approved by the county was not approved by the city after the city annexed the property.

Motion was made by Howard Phillips and seconded by Marvin Alexander to take Legal's recommendation to close. Motion carried. No opposition.

200602938. Paul Ball.

Complaint reviewed by Marvin Alexander.

Staff Attorney presented the matter to the Commission Members. Marvin Alexander gave his review. After a lengthy discussion, motion was made by Kenneth Dreaden and seconded by Howard Phillips to dismiss due to there not being enough information. Motion carried. No opposition.

200503869. Tom Frits-paid agreed order. Motion was made by Howard Phillips and seconded by Marvin Alexander to take Legal's recommendation to close. Motion carried. No opposition.

200500634. Tom Dinardo paid agreed order. Motion was made by Howard Phillips and seconded by Marvin Alexander to take Legal's recommendation to close. Motion carried. No opposition.

Staff Attorney requested blanket approval for informal hearings. Motion was made by Howard Phillips and seconded by Kenneth Dreaden to give Staff Attorney blanket approval for informal hearings. Motion carried. No opposition.

Sheila Piper presented the continuing education of James Fisher to the Commission Members. Motion was made by Howard Phillips and seconded by Marvin Alexander that continuing education will not count prior to being licensed. Late penalties to be assessed for lacking 6 hours of continuing education. Motion carried. Kenneth Dreaden abstained.

Lynn McGill presented a second letter from 84 Lumber Company requesting an exemption from the Auctioneer Licensing Law. Motion was made by Marvin Alexander and seconded by Howard Phillips that a licensed Tennessee auctioneer must conduct the auction. Exemption denied. Commission Members stand by previous ruling. Motion carried. No opposition.

Administrative Director discussed the budget with the Commission Members.

Commission Members discussed further changes to the Auctioneer Rules. Legal Counsel requested discussion regarding the economic impact of the proposed rule changes on small business owners pursuant to Executive Order #38. Commission Members discussed the minimal impact.

There being no further business, meeting adjourned.

Minutes
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APPROVED:

Bobby Colson
Chairperson

Kenneth Dreaden
Vice-Chairperson

Howard Phillips
Board Member

Marvin Alexander
Board Member